

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

TRIPHONIA HOWARD ,

Plaintiff,

v.

THE STATE OF WASHINGTON, THE  
DEPARTMENT OF SOCIAL AND  
HEALTH SERVICES, and CHARLES  
HUNTER ,

Defendant.

Case No. C04-05474 RBL

ORDER HOLDING THAT PLAINTIFF  
HAS NO 42 U.S.C. § 1981 CLAIM AND  
DENYING PLAINTIFF'S  
ALTERNATIVE MOTION FOR LEAVE  
TO AMEND COMPLAINT

THIS MATTER having come before the Court on Defendants' issue brief regarding Plaintiff's 42 U.S.C. § 1981 claim and Plaintiff's motion in the alternative for leave to amend his complaint [Dkt. #73; 75]. The Court does not require oral argument on these matters. The Court has reviewed the materials submitted by the parties and for the reasons set forth below, holds that Plaintiff has no 42 U.S.C. § 1981 claim and denies Plaintiff's motion for leave to amend his complaint.

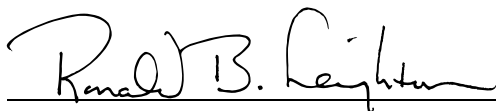
Plaintiff's complaint, filed on August 10, 2004, specifically raised the following claims: 42 U.S.C. §

1 1981 (discrimination); Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e (discrimination); 42 U.S.C.  
2 § 1983 (discrimination); RCW 49.60.180 (discrimination); RCW 49.60.220 (aiding and abetting); RCW  
3 49.60.210 (retaliation); Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-3 (retaliation); Negligent  
4 Supervision/Retention/Hire; and Breach of Contract/Promissory Estoppel [Dkt. #1].  
5

6 Plaintiff raised two distinct Title VII claims alleging discrimination and retaliation separately. Plaintiff  
7 also claimed retaliation and discrimination separately under RCW 49.60. However, not until January 2, 2009,  
8 did Plaintiff attempt to change his discrimination claim under 42 U.S.C. § 1981 to retaliation. Between August  
9 10, 2004 and January 2, 2009, Plaintiff had never argued retaliation under § 1981. In fact, Plaintiff expressly  
10 abandoned his §1981 claim at summary judgment [Dkt. #32]. Moreover, Plaintiff failed to argue retaliation  
11 under § 1981 on appeal, and the Court of Appeals did not recognize nor remand Plaintiff's § 1981 claim in any  
12 form<sup>1</sup>. Plaintiff's concession of any § 1981 claim at summary judgment and otherwise failure to address  
13 retaliation under § 1981 renders the claim unavailable at trial.  
14

15 Plaintiff's motion to amend his complaint to include a § 1981 retaliation claim is DENIED. Over four  
16 years have passed without Plaintiff pleading retaliation under § 1981 and no compelling reasons exist allowing  
17 an amendment at this late stage. Retaliation claims under § 1981 have been recognized by the Ninth Circuit  
18 since 2003<sup>2</sup>; therefore, Plaintiff could have plead retaliation in his 2004 complaint but failed to do so. IT IS  
19  
20 SO ORDERED.  
21

22 Dated this 28<sup>th</sup> day of January, 2009.

23  
24   
25 RONALD B. LEIGHTON  
UNITED STATES DISTRICT JUDGE

26  
27 <sup>1</sup>Court of Appeals recognized and remanded only the single federal retaliation claim under Title VII and made no  
28 mention of retaliation under § 1981. See Memorandum from Ninth Circuit Court of Appeals. Also remanded was Plaintiff's state  
law aiding and abetting claim.

<sup>2</sup>*Manatt v. Bank of America*, 339 F.3d 792, 800 (9th Cir. 2003).